

USDOL/OALJ Reporter

[*Bivens v. Louisiana Power & Light*](#), 89-ERA-30 (ALJ May 22, 1992)

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U.S. Department of Labor
Office of Administrative Law Judges
Heritage Plaza, Suite 530
111 Veterans Memorial Blvd.
Metairie, LA 70005
(504) 589-6201

DATE: May 22 1992
CASE NO. 89-ERA-30

IN THE MATTER OF

KENNITH J. BIVENS
Complainant

v.

LOUISIANA POWER & LIGHT
Respondent

RECOMMENDED ORDER APPROVING SETTLEMENT

This matter came on for hearing February 12, 1992, and the parties advised they had reached a settlement. The parties have now submitted a settlement application which is attached hereto and incorporated herein by reference. The settlement provides for a lump sum payment to Complainant, Kenneth Bivens, of \$13,000.00, out of which he shall be responsible for all attorney fees for which he has contracted.

The subject agreement was signed by Complainant, Kenneth J. Bivens, and his wife, Carole Bivens; a representative of Respondent and the attorneys for both parties.

The complaint was denied by the District Director, and there are serious fact and legal issues involved.

Having reviewed the settlement application, the Judge is of the opinion that the settlement application is adequate and recommends that the Secretary of Labor approve the settlement.

RECOMMENDED ORDER

It is hereby Recommended that the Secretary issue an order in this matter as follows:

The settlement is **APPROVED**.

KENNETH A. JENNINGS
Administrative Law Judge

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE is made and entered into by and among Kenneth J. Bivens ("Bivens"), Carole Bivens, and Louisiana Power & Light Company ("LP&L").

WHEREAS, Bivens was hired by LP&L on July 1, 1987;

WHEREAS, on April 6, 1989, Bivens filed with Department of Labor a complaint alleging that a reassignment on April 1989 (not associated with a salary decrease) constituted discrimination under Section 210 of the Energy Reorganization Act;

WHEREAS, the Wage and Hour Division of the Department of Labor, on May 5, 1989, found no evidence to support the complaint, and Bivens thereafter requested a hearing, docketed as 89-ERA-30;

WHEREAS, Bivens' employment with LP&L ceased on December 21, 1989, when Bivens commenced a period of long-term disability not caused by or causally related to his employment with LP&L;

WHEREAS, Bivens has now offered to settle fully and finally all claims arising from his employment with LP&L from July 1, 1987 to December 21, 1989, including all claims embodied in the aforementioned complaint and request for hearing, in exchange for the consideration discussed below, and LP&L has accepted this offer;

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, it is agreed as follows:

1. In consideration for Bivens' promises discussed herein and seven (7) days after receipt of notice of approval of this Settlement Agreement and General Release by the Secretary of Labor, LP&L agrees to deliver to Bivens' attorney, John Lindner, a check in the amount of \$13,000 payable to Kenneth J. Bivens.

2. In exchange for LP&L's promises contained herein, Bivens, on behalf of himself, and his heirs, assigns and personal representatives, and Carole J. Bivens, on her own behalf, hereby voluntarily, unconditionally and irrevocably waive, release and forever discharge LP&L, its parent, subsidiaries, affiliates and divisions and their respective successors and assigns, and their directors, officers, representatives, shareholders, agents

and employees from any and all liabilities, charges, claims and actions, known or unknown, including but not limited to claims directly or indirectly related to or arising out of any matters referred to in the Complaint and Request for Hearing filed by Bivens with the Department of Labor on or about April 6, 1989, and any other claims under the Energy Reorganization Act, the Age Discrimination in Employment Act, as amended, or other federal, state or local law (common or statutory), regulation, ordinance, or executive order, known or unknown, arising out of Bivens' employment, transfer of positions, or discontinuance of employment with LP&L, whether brought by them or another on their behalf. Bivens and Carole J. Bivens further covenant and agree not to sue or commence any proceeding against LP&L relating to Bivens' employment with LP&L; to withdraw with prejudice any pending charges, claims, actions or complaints relating to Bivens' employment with LP&L; and not to bring any such charges, claims, actions or complaints against LP&L in the future based on events occurring prior to the date of this Settlement Agreement and General Release. Nothing, however, in this Settlement Agreement shall prohibit Bivens from providing information to the U.S. Nuclear Regulatory Commission or other governmental agencies enforcing statutes under their jurisdictions, although Bivens may not seek, and waives any and all right to, recovery or relief as a result of such communications with an agency relating to or arising out of Bivens' employment with LP&L.

3. Bivens represents that he has not heretofore assigned or transferred or purported to assign or transfer, to any person or entity, any claim or portions thereof or interest therein relating to or arising out of his employment with LP&L.

4. Bivens agrees that he is exclusively responsible for the payment of any and all attorneys fees he has contracted for in connection with his claims against LP&L and all federal, state, and local taxes which may be due as the result of the payment he receives from LP&L under this Settlement Agreement and General Release.

5. Bivens, Carole Bivens and LP&L acknowledge that they are voluntarily entering into this Settlement Agreement and General Release. Additionally, Bivens and Carole Bivens represent that they have consulted with their attorney, John Lindner, prior to executing this Settlement Agreement and General Release.

6. This Agreement shall in no way be construed as an admission by LP&L of any acts of discrimination or other wrongful acts whatsoever against Bivens under the Energy Reorganization Act, the Age Discrimination in Employment Act, or any other federal, state or local statute, regulation or ordinance. LP&L specifically denies any liability to or discrimination against Bivens or any other person on the part of itself, its officers and employees.

7. Bivens and Carole J. Bivens represent and agree that they will keep the terms, amount and fact of this Settlement Agreement and General Release completely confidential and that, except as otherwise required by law, they will not disclose any information concerning this Settlement Agreement and General Release to anyone.

8. Notwithstanding the restrictions of Paragraph 7, Bivens may disclose the terms of this Settlement Agreement and General Release to the Nuclear Regulatory Commission and other government agencies in accordance with Paragraph 2 and to his attorney, accountant, and immediate family provided such parties agree to maintain the confidentiality of this Settlement Agreement and General Release as provided above; and the parties may disclose this Settlement Agreement and General Release to Judge Jennings and the Secretary of Labor for the sole purpose of obtaining approval of the Settlement Agreement and General Release, and to any other person as required by law.

9. LP&L agrees that unless otherwise required by law, if contacted with regard to Bivens' employment, it shall provide neutral references consisting of such information as the dates Bivens' employment, his job titles and salary, and medical treatment as the reason for discontinuance of employment.

10. Bivens acknowledges that he has been given at least twenty-one (21) days to consider this Settlement Agreement and General Release, and that he has seven (7) days from the date he signs this Settlement Agreement and General Release to revoke it and that this Settlement Agreement and General Release will not be enforceable until after the revocation period ends.

11. This Settlement Agreement and General Release shall in all respects be interpreted, enforced and governed under the law of the State of Louisiana. The language of all parts of this Settlement Agreement and General Release shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against any of the parties.

12. Should any provision of this Settlement Agreement and General Release be declared or determined by any court or reviewing authority to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Settlement Agreement and General Release.

13. This Settlement Agreement and General Release sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings, oral or written, among the parties pertaining to the subject matter herein.

PLEASE READ CAREFULLY. THIS SETTLEMENT
AGREEMENT AND GENERAL RELEASE INCLUDES A
RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS

Complainant:

Kennith J. Bivens Date

Carole Bivens Date

Company:

By: Signature William Cavanaugh III Date

Executive VP and
Chief Nuclear Officer Title

For: Louisiana Power & Light

ADDENDUM TO SETTLEMENT AGREEMENT AND GENERAL RELEASE

The undersigned attorneys representing Claimant and his wife, Kenneth and Carole Bivens, and the employer, Louisiana Power & Light, respectively, hereby state that (1) their clients were fully informed about the terms and conditions of the Settlement Agreement and General Release (2), the undersigned find the agreement to be fair to all parties; and (3) the undersigned concur with the Settlement Agreement and General Release.

Attorney for Complainant Kenneth J. Bivens & Carol Bivens:

Leslie Lanusse Date

Attorney for Louisiana Power & Light;

David R. Lewis Date